

Agenda

Item #8



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 19, 2012

Re: Request for Waiver of Penalty by the Aroostook Democratic County Committee

The Aroostook Democratic County Committee (the Committee) is a county Democratic Party committee. On October 19, 2012, it made an expenditure of \$803 for radio advertising in support of House candidate Robert Saucier. It was required to file an independent expenditure report within two calendar days on October 21.

The committee did not file an independent expenditure, at first. Instead, the committee did account for the expenditure in its regular party committee report filed on October 25, 2012. Based on the amount of financial activity in the report and the number of days late, the Commission staff calculated the preliminary penalty to be \$64.24. The staff sent a notice of staff finding of violation and preliminary penalty to Roger Roy, the treasurer for the Committee, on October 30, 2012. The Commission received an emailed request for a waiver of the preliminary penalty on October 29, 2012 in response to telephone conversations between Commission staff and Mr. Roy.

The Committee requests a waiver because:

- The Committee was not aware an IE report was expected from county committees, having never before made an expenditure which required an IE report.

Staff Recommendation

The Commission staff recommends not waiving the preliminary penalty, in order to consistently remind all party committees of the importance of filing independent expenditure reports and because the amount of \$64.24 is not disproportionately high. The independent expenditure report provides prompt disclosure to the public of paid communications to influence candidate elections and verifies that the expenditure was made independently of the candidates in the race. If a county party committee is involved in independent expenditures, it is the committee's responsibility to understand the filing requirements. This report was filed four days late and probably was filed only because the Commission staff notified the committee. Mr. Roy states that he has been acting as a treasurer for "over twenty years" for the Aroostook Democratic County Committee. The preliminary penalty amount, \$64.24 is not disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Thank you for your consideration of this memo.

Marett, Matthew

From: Marett, Matthew
Sent: Tuesday, October 30, 2012 10:35 AM
To: 'Mae Soucy'
Subject: RE: Emailing: Doc 1, Doc 2, Doc 3, Doc 4
Attachments: aroostook-democratic-county-committee_late-ie_10-30-12.pdf

Mr. Roy,

Attached is a preliminary penalty letter regarding the late IE report. We received the IE report along with your waiver request, thank you. Please let me know if you have any questions.

Best,

Matt Marett
Maine Ethics Commission
PAC, Party & Lobbyist Registrar
(207) 287-6221

-----Original Message-----

From: Mae Soucy [<mailto:soucyroy@maine.rr.com>]
Sent: Monday, October 29, 2012 6:41 PM
To: Marett, Matthew; Ethics Commission
Subject: Emailing: Doc 1, Doc 2, Doc 3, Doc 4

Matthew,

I have attached the four pages of the Independent Expenditure Report.

I completed the report as soon as I became aware of it.

I am asking for the fine to be waived because I was unaware of this form for the County Committee.

I have been doing the ethics committee reports for over twenty years for the Aroostook Democratic County Committee, and I was not made aware that this form was required for us. This is the first expenditure that the committee has made that qualifies as an independent expenditure. Note that I was not even required to submit a report on October 23 since my expenditures were below \$1500.

I always report every six months no matter how small our expenditures and receipts are.

The ethics committee should have mention of this reporting requirement on the party committee report on the page that asks about expenditures made for campaigns.

I reported accurately what transpired on the date I thought I had to report.

This is not a PAC nor do we do extensive spending on campaigns.

Thank you,

Roger Roy

Treasurer,

Aroostook Democratic County Committee.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 30, 2012

By E-mail and Certified Mail

Mr. Roger Roy, Treasurer
Aroostook Democratic County Committee
287 Lake Shore Drive
Madawaska Lake, ME 04783

Re: Penalty for late filing of IE report

Dear Mr. Roy,

The Commission staff has made a preliminary determination that the Aroostook Democratic County Committee (Committee) was late in filing an Independent Expenditure (IE) report. IE reports are due within two calendar days of any expenditure over \$250 per candidate made between 9/7/2012 and 10/23/2012. (Commission Rules, Chapter 1, Section 10(3)) The Committee made such an expenditure on 10/19/2012 and reported it in its 11-Day Pre-General Election report on 10/25/2012. Pursuant to the above rules, however, the Committee should also have filed an IE for the expenditure by 10/21/2012. Upon learning that an IE was required, the Committee filed an IE report on 10/29/2012.

Under the Commission's statutes, the late filing of an IE report triggers an enforcement process. (21-A M.R.S.A. § 1020-A(4-A)) Based on the amount of financial activity in the report, the number of calendar days the report was late, and the Committee's history of violations, the commission staff has determined that a penalty of \$64.24 is owed. (Please see attached penalty matrix for the calculation).

The Committee has already made a written request for waiver to the Commission. The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the committee made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure. (21-A M.R.S.A. § 1020-A(2))

The Committee is encouraged to submit any additional evidence that it believes is necessary to the full consideration of its waiver request. The Committee's request will be placed on the agenda for an upcoming Commission meeting. Additional details regarding the exact time and date of the Commission meeting will follow.

Please call me at (207) 287-6221 or send me an email at Matthew.Marett@Maine.gov if you have any questions.

Sincerely,

Matthew Marett
PAC, Party & Lobbyist Registrar

Enclosure: PAC penalty matrix

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

Committee Name:	Aroostook Democratic County Committee	Report Title:	Independent Expenditure
		Due Date:	October 21, 2012
Previous Violation(s):	n/a	Filed Date:	October 29, 2012

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%
 For the second violation, 3%
 For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

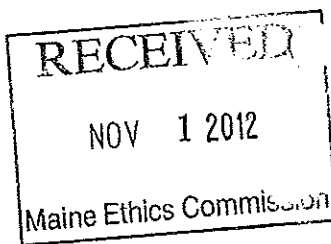
Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	\$803.00
		x	
		Percent Prescribed:	1%
			\$8.03
X .01	Percent prescribed for first violation		
		x	
\$25.00	One percent of total contributions	Number of days late:	8
X 2	Number of calendar days late	Total penalty accrued:	\$64.24
\$50.00	Total Penalty		

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES
 21-A M.R.S.A. Section 1062-A(3)
 \$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

INDEPENDENT EXPENDITURE REPORT – 2012 GENERAL ELECTION

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on a weekend or holiday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

☐ Check here if this report is an amendment to a previously filed report? Date of original report: _____

INDEPENDENT EXPENDITURES OVER \$250 MADE FROM SEPTEMBER 7 THROUGH OCTOBER 23, 2012

- ☒
- Report of Independent Expenditure over \$250 per Candidate

INDEPENDENT EXPENDITURES OVER \$100 MADE AFTER OCTOBER 23, 2012

- ☐
- Report of Independent Expenditure over \$100 per Candidate

OTHER INDEPENDENT EXPENDITURES (SELECT ONE REPORT BELOW)

Report (select one)	Due Date	What Gets Reported
<input type="checkbox"/> 60-Day Pre-Election Report	September 7, 2012 by 5:00 p.m.	Expenditures totaling more than \$100 per candidate made on or before September 6, 2012
<input type="checkbox"/> 11-Day Pre-Election Report	October 26, 2012 by 5:00 p.m.	Expenditures totaling more than \$100 but not more than \$250 made from September 7 through October 23, 2012

I CERTIFY THAT THE ~~INFORMATION~~ IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Signature of PAC or Party Treasurer, or
Other Authorized Person Making Expenditure(s)

AROSTOOK
DEMOCRAT
COUNTY
COMMITTEE, TREASURER 10/29/12

Signature of PAC or Party Treasurer, or
Other Authorized Person Making Expenditure(s)

Date

I believe penalty should be waived since I reported this
on my committee for Oct 23. There is no reference to
this on my reporting page and I filled that in completely

Rev. 07/25/2012

Rev. 07/25/2012



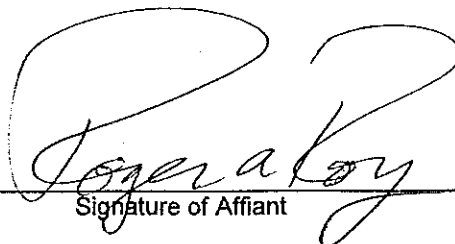
INDEPENDENT EXPENDITURE REPORT – 2012 GENERAL ELECTION

AFFIDAVIT

STATE OF MAINE

COUNTY OF AROOSTOOK

I, ROGER ROY, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate in a race affected by any expenditure listed in this report.


Signature of Affiant

Sworn to before me, this 29th day of October 2012


(Notary Public/Attorney at Law)

My commission expires: 4 MARCH 2016

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
House 85	ROBERT SAUCIER	SUPPORT	903.00
Total expenditures for all candidates this reporting period. <i>This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. ⇒</i>			0

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types

LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
10/19/12	CAN X Me Broadcasting 152 East Green Ridge Road Carroll ME 04736	RAD		803.00
A. Expenditures for this page ⇒				⁰ 803.00
B. Total for all other Schedule B-IE-2 pages (if any) ⇒				803.00
C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. ⇒				⁰



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Fax: 207-287-6775

2012 CAMPAIGN FINANCE REPORT FOR PARTY COMMITTEES

COMMITTEE INFORMATION		
AROOSTOOK DEMOCRATIC COUNTY COMMITTEE 19 BAIRD ROAD CARIBOU, ME 04736	TEL: (207)768-1688 FAX: E-MAIL: soucyroy@maine.rr.com	
TREASURER		
ROGER A. ROY 287 LAKE SHORE DRIVE MADAWASKA LAKE, ME 04783	TEL: (207)768-1688 FAX: E-MAIL: soucyroy@maine.rr.com	
TYPE OF REPORT	DUE DATE	REPORTING PERIOD
ELECTION - OCTOBER - 11-DAY	10/26/2012	7/1/2012 - 10/23/2012
NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES A1, C, D		
CERTIFICATION		
<p>I, ROGER A. ROY, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.</p> <p>REPORT FILED BY: ROGER A. ROY</p> <p>REPORT FILED ON: 10/25/2012</p> <p>IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE COMMITTEE, THE TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.</p>		

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

AROOSTOOK DEMOCRATIC COUNTY COMMITTEE

SCHEDULE B ONLY

**SCHEDULE B
EXPENDITURES TO SUPPORT OR OPPOSE**

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees	
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services	
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)	
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs	
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs	
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)	
OFF	Office rent, utilities, phone and internet services, supplies	TVN	TV or cable ads, production costs	
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.	
PHO	Phone banks, automated telephone calls			
Only these expenditure types require a remark: CNS, OTH, PRO.				

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/19/2012	CAN X US COMMUNICATIONS 152 EAST GREEN RIDGE ROAD CARIBOU, ME 04736		RAD	\$803.00
	PAYMENT TO SUPPORT: ROBERT J. SAUCIER, REPRESENTATIVE, DISTRICT: 5			
TOTAL EXPENDITURES ➡				803.00

**SCHEDULE F
SUMMARY SCHEDULE**

CASH ACTIVITY		
RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR THE YEAR
1. CASH CONTRIBUTIONS (Schedule A)	\$378.00	\$1,941.96
2. OTHER CASH RECEIPTS (Interest, etc.)	\$0.00	\$0.00
3. LOANS (Schedule C, new loans and additional amounts loaned)	\$0.00	\$0.00
4. TOTAL RECEIPTS (lines 1+2+3)	\$378.00	\$1,941.96
EXPENDITURES		
5. EXPENDITURES TO SUPPORT OR OPPOSE (Schedule B)	\$803.00	\$803.00
6. OPERATING EXPENDITURES (Schedule B-1)	\$558.00	\$783.00
7. LOAN REPAYMENTS (Schedule C)	\$0.00	\$0.00
8. TOTAL PAYMENTS (lines 5+6+7)	\$1,361.00	\$1,586.00
OTHER ACTIVITY		
	TOTAL FOR THIS PERIOD	TOTAL FOR THE YEAR
9. IN-KIND CONTRIBUTIONS (Schedule A-1)	\$0.00	\$0.00
10. TOTAL LOAN BALANCE AT END OF PERIOD (Schedule C)	\$0.00	
11. TOTAL UNPAID DEBTS AT END OF PERIOD (Schedule D)	\$0.00	

21-A M.R.S.A. §1020-A. FAILURE TO FILE ON TIME

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (NEW) .]

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD) .]
- B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD) .]

[2009, c. 190, Pt. A, §13 (AMD) .]

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[2011, c. 389, §22 (AMD); 2011, c. 389, §62 (AFF) .]

4. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]